



## SANDY SPRINGS

GEORGIA

### P&Z STAFF REPORT

Board of Appeals Meeting, March 4, 2020

Case: **V20-0009 – 5072 Riverview Road**  
Staff Contact: Madalyn Smith (msmith@sandyspringsga.gov)  
Report Date: February 25, 2020

#### REQUEST

Request for a Variance from Sec. 7.8.22. to allow a play structure in the front yard.

#### APPLICANT

Property Owner: Jessica and Scott Borgert	Petitioner: Jessica and Scott Borgert	Representative: N/A
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#### SUMMARY

The applicant requests a Variance from Sec. 7.8.22. to allow for a recently constructed play structure to remain located in the front yard, and primary street setback.

#### RECOMMENDATION

##### Department of Community Development


Staff recommends **Denial** of **Variance** V20-0009.

#### MATERIALS SUBMITTED AND REVIEWED

##### *Materials:*

1. Application, received January 30, 2020
2. Survey, dated December 13, 1989, and received January 30, 2020

<b>PROPERTY INFORMATION</b>	
Location:	5072 Riverview Road (Parcel # 17 0211 LL0935)
Council District:	6 – Bauman
Road frontage:	Approximately 99.5 feet of frontage on Riverview Road
Acreage:	Approximately 3.5 acres
Current Zoning:	RE-2 (Residential Estate, 2 acre minimum lot size)
Existing Land Use:	Single unit detached residence
Previous Zoning Cases:	N/A
Character Area:	Protected Neighborhood

<b>PROPOSED DEVELOPMENT</b>
<p>The requested Variance is for an existing play structure that encroaches into the front yard. The existing play structure violates the setback regulations for accessory structures, and the violation was discovered by a Code Enforcement Officer during a routine patrol.</p> <p>The play structure is approximately 14 feet tall and 80 square feet in total area. The following images show the existing conditions of the play structure and 5072 Riverview Road.</p>
 <p>The photograph shows a play structure constructed from wooden beams and stacked Everbilt boxes. The structure is elevated on a wooden frame. It is surrounded by trees and a house is visible in the background. The ground is covered with dry leaves.</p>
View of play structure



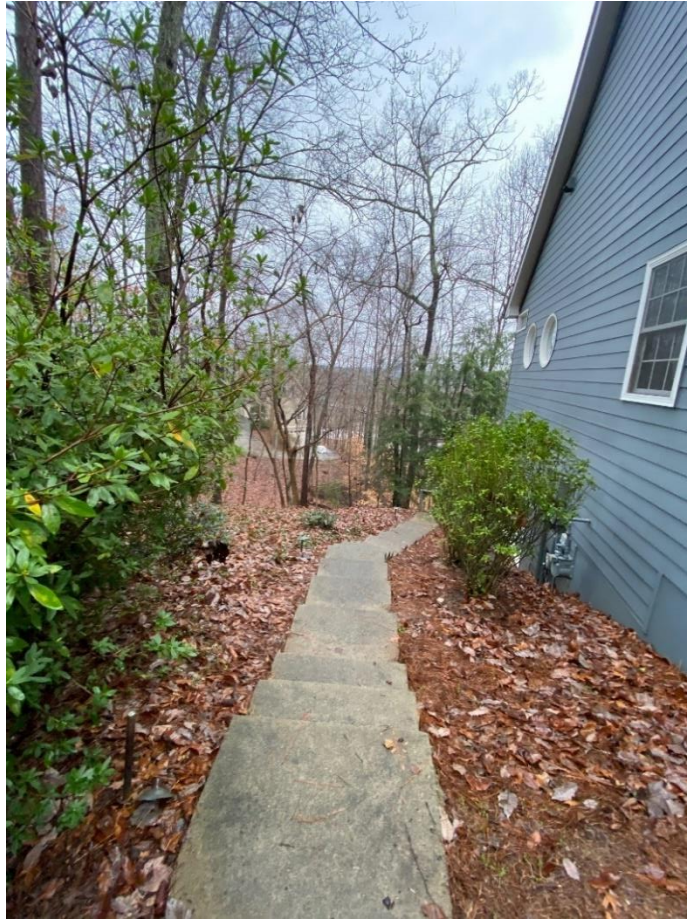


**View looking west from the street**



**East side of home**





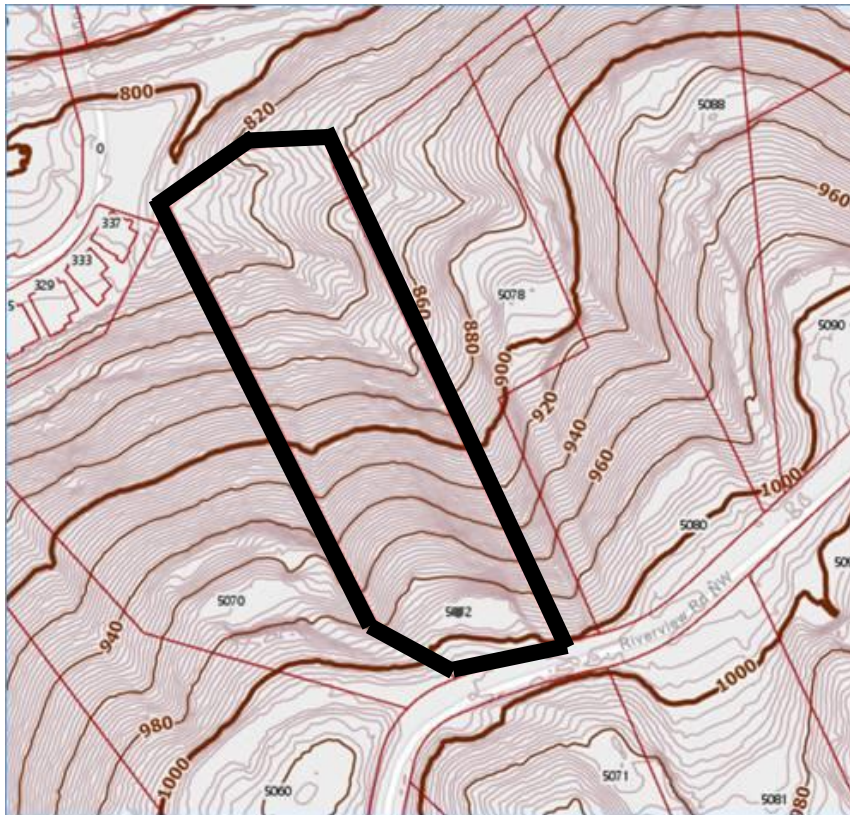
**West side of home**



**Rear of home looking east**

*(All photographs by Madalyn Smith, February 11, 2020)*





Top of subject and surrounding lots



Approximate location of accessory structure

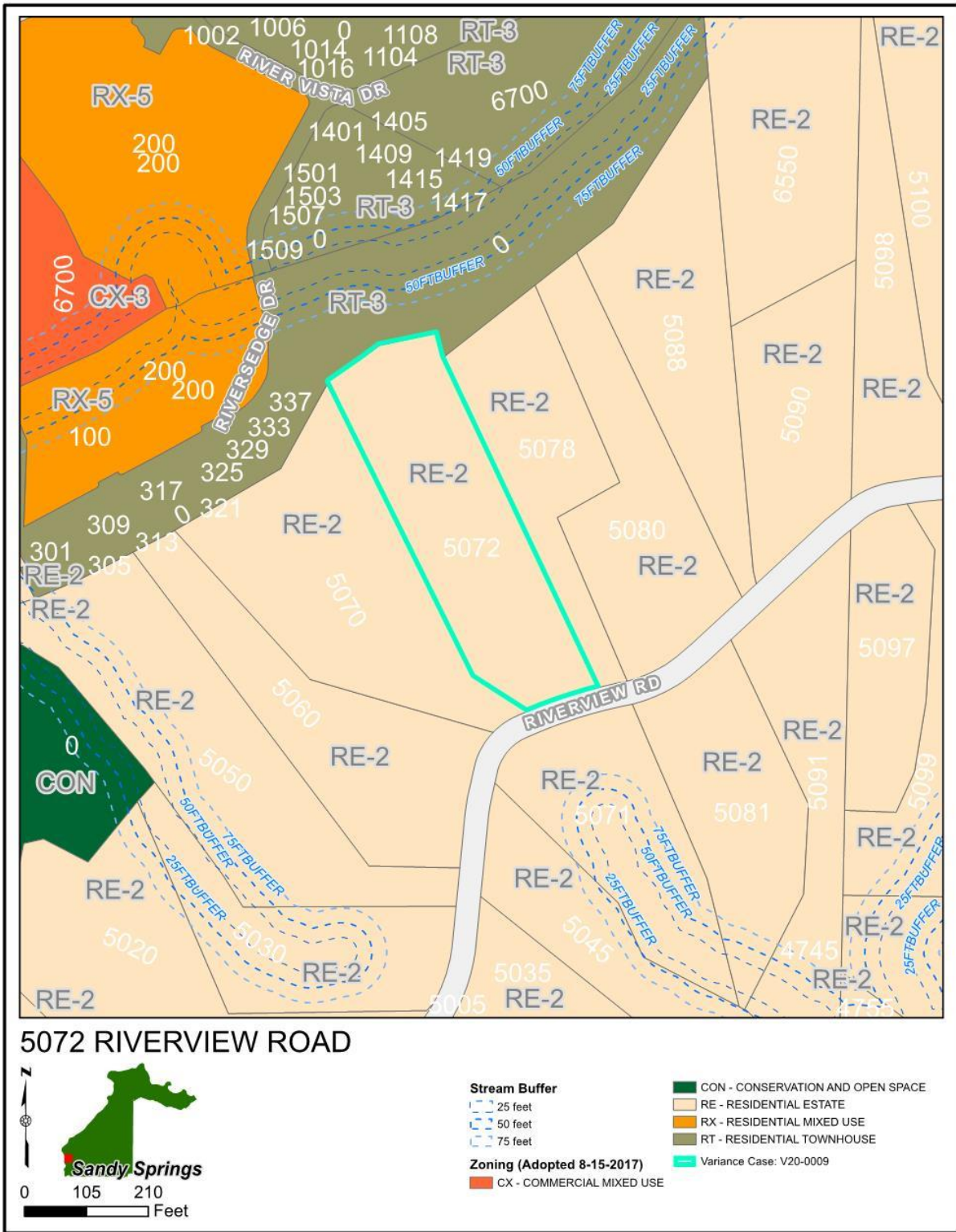
EXISTING ZONING AND LAND USES OF PROPERTY IN THE VICINITY			
Location relative to subject property	Zoning / Land use	Address(es)	Land area (acres) (approximate)
North	RT-3 / Single Unit Attached	0 Riverside Drive Rear	2.44
East	RE-2 / Single Unit Detached	5078 Riverside Drive	2
South	RE-2 / Single Unit Detached	5071 Riverside Drive	2
West	RE-2 / Single Unit Detached	5070 Riverside Drive	2.98
PROPOSED DEVELOPMENT			
--	RE-2 / Single Unit Detached	5072 Riverside Drive	3.3

# AERIAL IMAGE

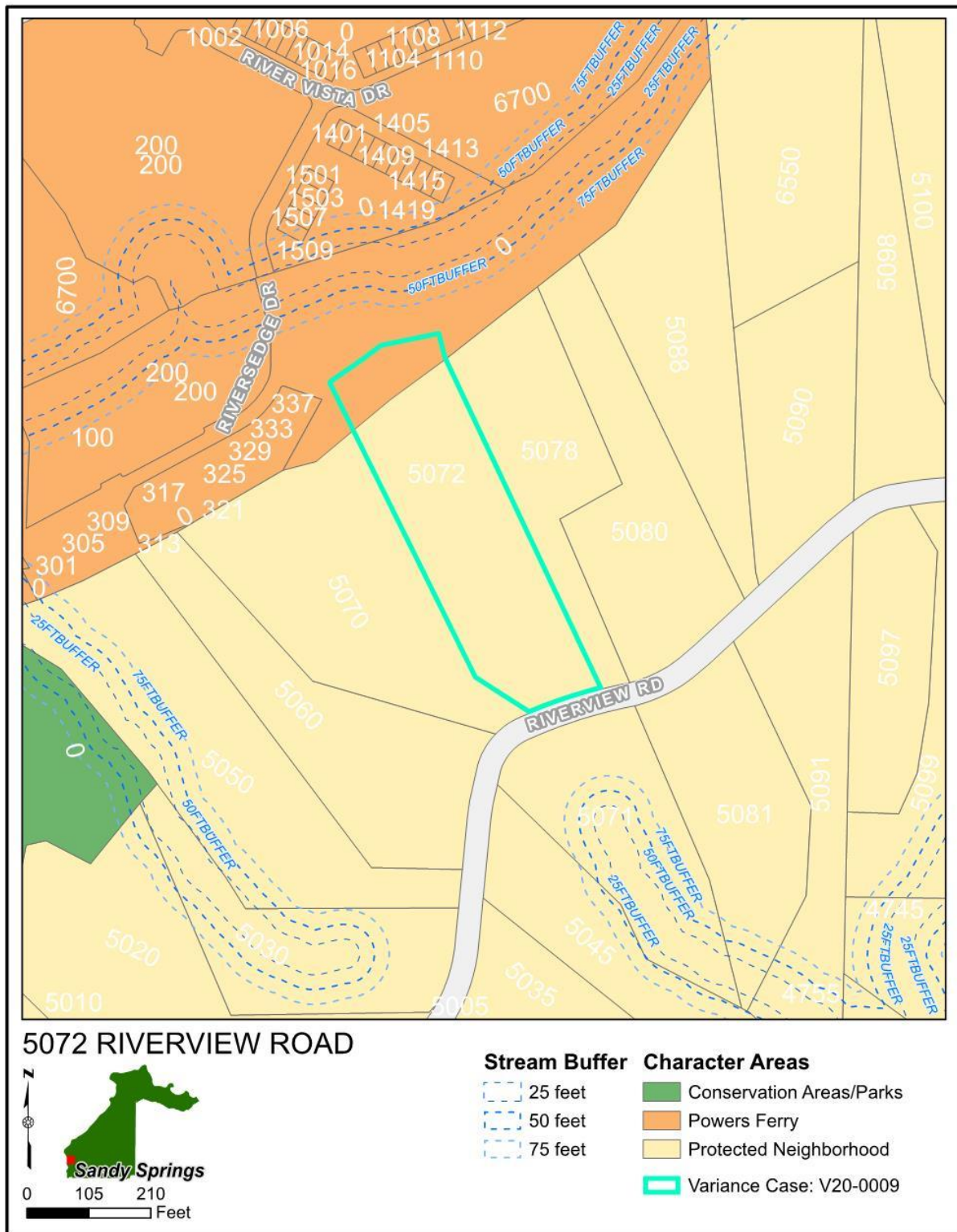




# ZONING MAP



# CHARACTER AREA MAP





## VARIANCE CONSIDERATIONS

Per Sec. 11.3.6.G. of the Development Code, the following list of approval criteria for a Variance provides guidance for making decisions on approval:

**1. Variances will only be granted upon showing that:**

**a. The application of this Development Code would create an unnecessary hardship, and not merely an inconvenience to the applicant; or**

Finding: It is Staff's opinion that application of the Development Code would not create an unnecessary hardship, but merely an inconvenience to the applicant, as the existence of a play structure is not typically considered vital to a reasonable use of residential property.

**b. There are extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties;**

Finding: The subject property is largely formed of moderate (15% to 35% ) to steep (35% or greater) slopes. The lot drops 200 feet in elevation over a span of 655 feet (from the front to rear); for an approximate average slope of 31%. The relatively flat locations on the property are the parking pad in front of the garage and one portion of the front yard where the play structure is placed; which together constitute an area of approximately 2,500 square feet. Most other locations on the property would likely require some degree of grading and/or retaining walls to make an area closer to a grade of 15% or less to be able to place a play structure. The subject property is located within the Chattahoochee River Corridor, and it is preferable for land disturbing activities to be limited.

There's no challenge based on the size and shape of the property, but the topography is extraordinary and exceptional. .

**2. Further, the application must demonstrate that:**

**a. Such conditions are not the result of action or inaction of the current property owner; and**

Finding: The conditions of the property were present at the time of purchase. The applicant installed the play structure thus, it is Staff's view that the conditions are the result of action of the current property owner.

**b. The Variance request would provide the minimum relief necessary to make possible the reasonable use of the property; and**

Finding: There is currently a single unit detached dwelling onsite. Thus, it is Staff's belief that the Variance request would not provide the minimum relief necessary to make possible the reasonable use of the property.

**c. The Variance request would result in development that is consistent with the general intent of this Development Code, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety and welfare.**

Finding: Per Section 1.1.5. of the Development Code, the stated intent of the Development Code is to guide reinvestment in established neighborhoods that preserves and reinforces their unique characteristics. Placing a play structure in the front of a yard of a residence is not permitted in any neighborhood. The proposed placement of the play structure would therefore, not preserve or reinforce existing neighborhood characteristics, as it is naturally uncharacteristic.

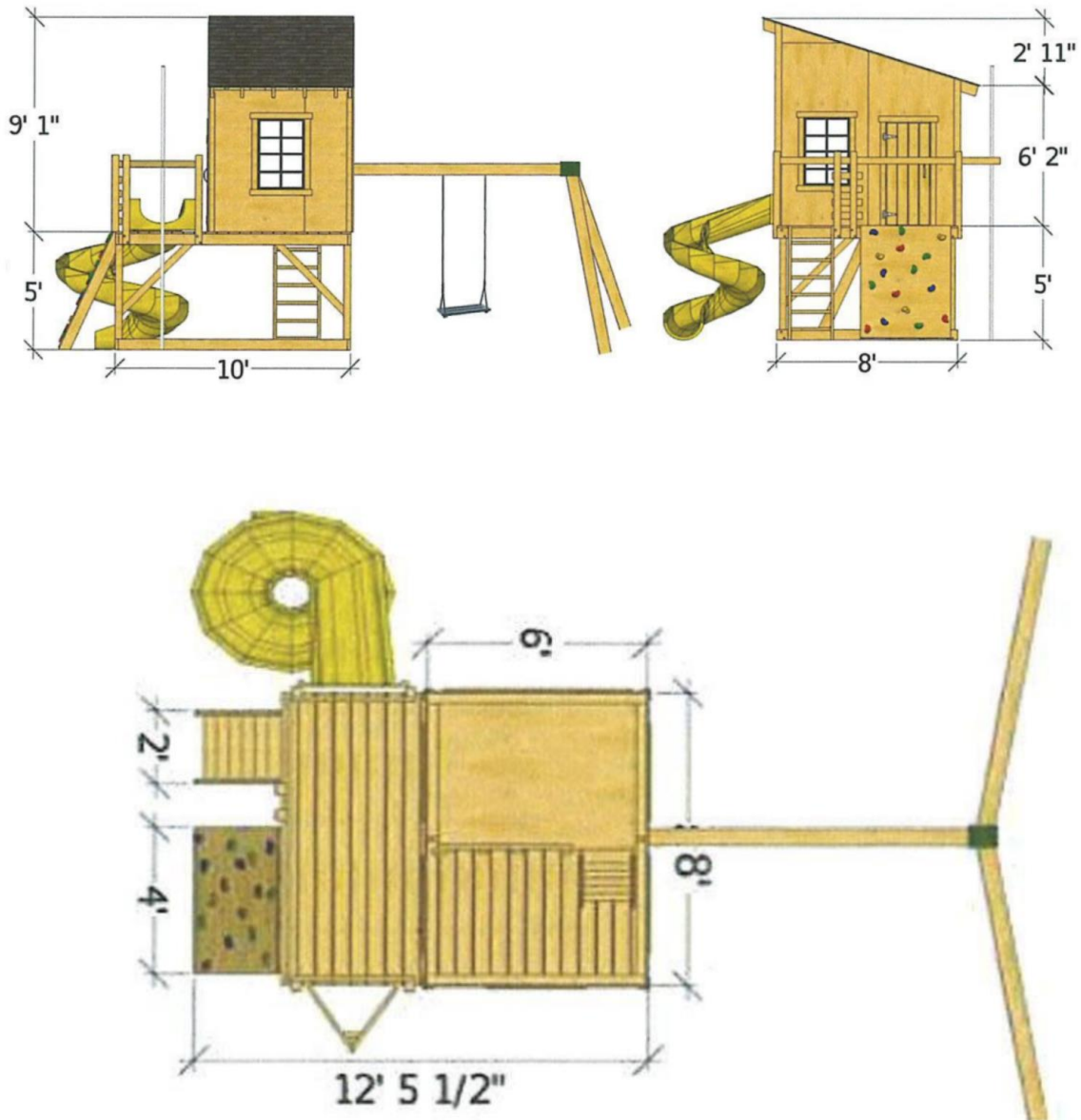
However, the applicant has provided letters of support from four (4) nearby neighbors, including the adjacent neighbor. The play structure is also relatively small and well screened. The play structure does not appear to be detrimental to the public good, safety, and welfare.

<b>COMMENTS FROM OTHER PARTIES</b>
<p><b>Sandy Springs Public Works:</b> No comment provided.</p> <p><b>Sandy Springs Transportation Engineer:</b> No comment provided.</p> <p><b>Sandy Springs City Engineer:</b> No comment provided.</p> <p><b>Sandy Springs Chief Environmental Compliance Officer:</b> No comment provided.</p> <p><b>Sandy Springs Arborist:</b> No comment provided.</p> <p><b>Sandy Springs Sustainability Manager:</b> No comment provided.</p> <p><b>Sandy Springs Building Official:</b> No comment provided.</p> <p><b>Sandy Springs Fire Marshal:</b> No comment provided.</p> <p><b>Correspondence Received:</b> Four (4) letters of support were provided by the applicant, as part of the application (see package). One (1) public comment was received in opposition (See Public Comment).</p>

<b>DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION</b>
<p>Following review, and based on the findings, Staff recommends <b>Denial</b> of <b>Variance</b> V20-0009, request for a Variance from Sec. 7.8.22. to allow a play structure in the front yard.</p> <p>However, should the Board of Appeals choose to approve Variance V20-0009, Staff recommends the following condition:</p> <ol style="list-style-type: none"><li>1. The location and extent of the play structure be limited to the location documented by photographs taken by Madalyn Smith on February 11, 2020 and limited to the size and height specified by the applicant in their application (See Exhibit 1).</li></ol>



Exhibit 1



## Public Comment

J. Zakem:

Regarding V20-0009

We are opposed to the granting of the variance for a play structure in the front yard of 5072 Riverview Rd. We have lived on Riverview Rd for 28 years, have raised our family here, and are well aware of the challenges presented by the topography of our street. Historically, we are personally aware of four instances where Sandy Springs or Fulton County have denied requests for use a front yard on our street for a soccer goal, RV storage, tennis court, and basketball court.

The proposed play structure would be a detriment to the aesthetics of our street and negatively impact the quality of our neighborhood. The play structure is positioned on ground higher than the main level of the house making its 14-foot height with an elevated playhouse and plastic slide even more obtrusive. Natural screening is currently inadequate and there is no guarantee the existing screening will remain intact.

While the homeowners indicate that the sides of the property do not offer a reasonable option for a play structure, they include a picture of the right side elevation that has a more severe slope. The left side elevation has a less severe slope and could perhaps provide a location with reasonable topographic modification, possibly with a variance of minimum side yard setback.

We all want what is best for our children. While a play structure provides an opportunity for children, its use will be at best occasional and quickly outgrown, while the neighborhood will be left with a "permanent" structure. There are numerous ways for children to have a rewarding and safe play experience in the front yard without utilizing a play structure that is in excess of 850 cubic feet.

We are committed to the quality of our neighborhood and would like to see its appearance protected and maintained by the City of Sandy Springs as outlined in the Development Code.

Thank you for the opportunity to provide input.

James F. Zakem

Rosalyn F. Reilley





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## VARIANCE APPLICATION

(Excludes Stream Buffer Variances)

### Application checklist:

Page No.	Item	Completed/ Included in Submittal
1	Project Information Sheet	<input checked="" type="checkbox"/>
2 - 3	Detailed Process and Instructions	N/A
4 - 5	Authorization Forms	<input checked="" type="checkbox"/>
	Additional requirements:	
6	Letter of Intent	<input checked="" type="checkbox"/>
6 - 7	Variance Analysis	<input checked="" type="checkbox"/>
7	Chattahoochee River Corridor Certificate	<input type="checkbox"/> or N/A <input checked="" type="checkbox"/>
7 - 8	Survey, Site Plan and Legal Description	<input checked="" type="checkbox"/>
9	Fee schedule	N/A
9	Meeting schedule	N/A

### Provide also:

All the documents electronically (CD/DVD, thumb drive or via email) Note: The Legal Description must be in a Word document	<input checked="" type="checkbox"/>
Site plan: one (1) copy on 11"x17" and two (2) full-scale copies	<input checked="" type="checkbox"/>

The Director reserves the right to request additional information deemed necessary to analyze the request. Incomplete applications will not be accepted.

Planner's initials: MS

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Case No.: V20-0009  
Planner's initials: MS

PROJECT INFORMATION SHEET

PROPERTY	Address(es): 5072 Riverview Road, Sandy Springs, GA 30327	
	Parcel Tax ID: 17 0211 LL0935	
	Land Lot(s):	Land District(s): 59
	Total acreage: 3.5	Council district:
	Current zoning: <u>R1 RE-Z</u>	Current use: <u>RESIDENTIAL</u>
	Character area: <u>PROTECTED NEIGHBORHOOD</u>	

APPLICATION	Detailed request (include Ordinance/Code Section No.):	
	We are seeking a variance to Development Code Section 7.8.22 (Accessory Structures) for a Play Structure due to the topography of our property. We began building the Play Structure on a site that is mostly screened by mature trees and shrubs and provides the primary users, our two minor children, with a relatively flat surface to safely access and enjoy the Play Structure. Neither the sides nor rear of our property provide the safety we seek, as the steep slopes would result in dangerous slides down the hill.	
	Petitioner: Jessica and Scott Borgert	
	Petitioner's address: [REDACTED] Sandy Springs, GA [REDACTED]	
	Phone: [REDACTED] Email: [REDACTED]	

OWNER	Property owner: Jessica and Scott Borgert	
	Owner's address [REDACTED] Sandy Springs, GA [REDACTED]	
	Phone: [REDACTED]	Email: [REDACTED]
	Signature (authorizing initiation of the process): <u>[Signature]</u> <i>If the property is under contract and the owner is unavailable to sign, provide a copy of the contract</i>	

- TO BE FILLED OUT BY P&Z STAFF -

Pre-application meeting date: <u>1/17/2020</u>	Anticipated application date: <u>1/30/2020</u>
Anticipated BOA date: <u>03/04/2020</u>	
ADDITIONAL INFORMATION NEEDED:	
<u>1/30/2020: provide legal description</u>	





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AUTHORIZATION FORM – PART I

A- The property owner must fill out the following section and have it notarized. If a property has multiple owners, each owner must separately fill out a copy of the authorization form.

Owner states under oath that he/she is the owner of the property described in the attached legal description, which is made part of this application.	
Owner's name: Jessica Boraert	Sworn and subscribed before me this 30 day of January 20 20 Notary public: [Signature] Seal:  Barbara Turner NOTARY PUBLIC Fulton County, GEORGIA My Commission Expires 09/10/2022  Commission expires:
Address: [Redacted]	
City, State, Zip Code: Sandy Springs, GA [Redacted]	
Email address: [Redacted]	
Phone number: [Redacted]	
Owner's signature: [Signature]	

B- If the applicant is *not* the owner of the subject property:

Fill out the following section, check the appropriate statement, and have it notarized.

Applicant states under oath that:	
<input type="checkbox"/> He/she is the executor or Attorney-in-Fact under a Power-of-Attorney for the owner ( <i>attach a copy of the contract</i> ); or	
<input type="checkbox"/> He/she has an option to purchase the subject property ( <i>attach a copy of the contract</i> ); or	
<input type="checkbox"/> He/she has an estate of years which permits the applicant to apply ( <i>attach a copy of the lease</i> )	
Applicant's name:	Sworn and subscribed before me this  day of _____ 20 ____ Notary public:  Seal:   Commission expires:
Company name:	
Address:	
City, State, Zip Code:	
Email address:	
Phone number:	
Applicant's signature:	



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AUTHORIZATION FORM – PART I

A- The property owner must fill out the following section and have it notarized. If a property has multiple owners, each owner must separately fill out a copy of the authorization form.

Owner states under oath that he/she is the owner of the property described in the attached legal description, which is made part of this application.	
Owner's name: Scott Borgert	<div>Sworn and subscribed before me this <u>30</u> day of <u>January</u> 20<u>20</u> Notary public: <u>[Signature]</u> Seal:  Barbara Turner NOTARY PUBLIC Fulton County, GEORGIA My Commission Expires 09/10/2022  Commission expires:</div>
Address: [Redacted]	
City, State, Zip Code: Sandy Springs, GA [Redacted]	
Email address: [Redacted]	
Phone number: [Redacted]	
Owner's signature: <u>[Signature]</u>	

B- If the applicant is *not* the owner of the subject property:

Fill out the following section, check the appropriate statement, and have it notarized.

Applicant states under oath that: <input type="checkbox"/> He/she is the executor or Attorney-in-Fact under a Power-of-Attorney for the owner ( <i>attach a copy of the contract</i> ); or <input type="checkbox"/> He/she has an option to purchase the subject property ( <i>attach a copy of the contract</i> ); or <input type="checkbox"/> He/she has an estate of years which permits the applicant to apply ( <i>attach a copy of the lease</i> )	
Applicant's name:	<div>Sworn and subscribed before me this  day of _____ 20____ Notary public:  Seal:   Commission expires:</div>
Company name:	
Address:	
City, State, Zip Code:	
Email address:	
Phone number:	
Applicant's signature:	



LETTER OF INTENT

JAN 30 2020

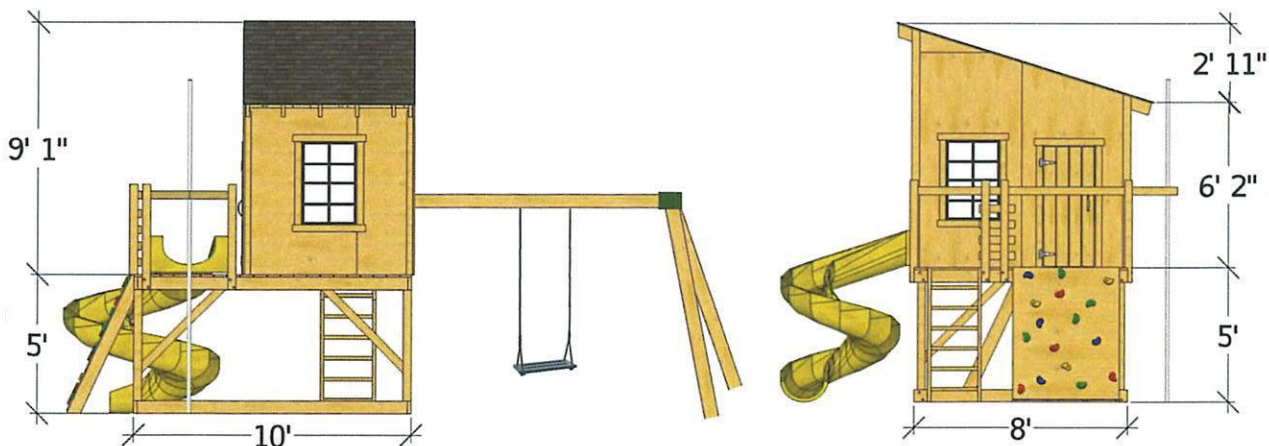
**1. Requested Variance**City of Sandy Springs  
Ordinance 5072

We are requesting a variance to Development Code Section 7.8.22 (Accessory Structures) for 5072 Riverview Road, Sandy Springs GA 30327, specifically sub-section A, which states "no minor residential accessory structures may be located between the main building and a primary street." We request a variance to Section 7.8.22 to allow placement of a play structure in the location shown below:

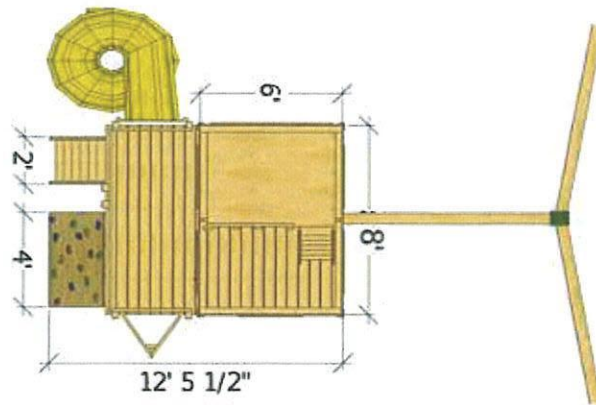
**2. Factual Details About the Proposed Development**

Our property is 3.5 acres and is mostly wooded with steep terrain. The lot is long and, because of the challenging topography, the main building structure is located toward the front of the property. The existing main building is a 4,856 square foot single-family home, which is located approximately 88 feet from the primary street.

The proposed play structure would be located approximately 45 feet from the primary street and is approximately 80 square feet in area, with additional width to accommodate both a slide and swing, as shown below:







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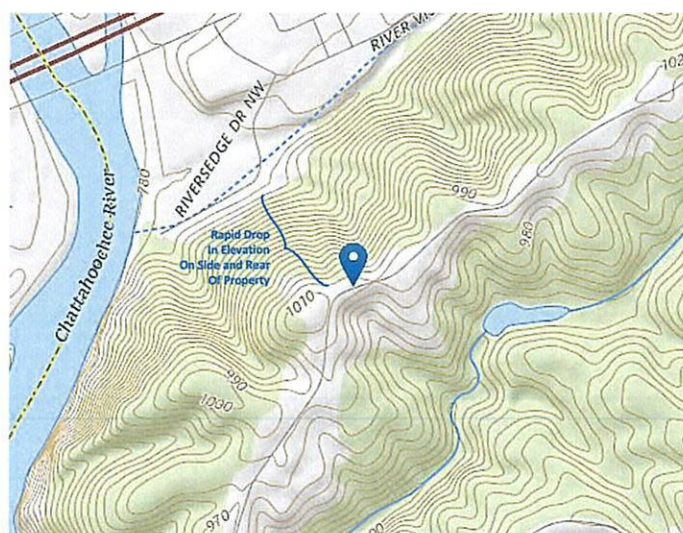
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Community Development

The photographs below show the current state of the play structure construction:



### 3. Alternative Designs Explored

Alternative designs were explored, but deemed unsafe as the topography and steep grade of our property prohibits the placement of a play structure in an alternate location. The challenging topography of our property is detailed below for further reference:





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VARIANCE ANALYSISCity of Sandy Springs  
Community Development**b. There are extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties**

The majority of our property is wooded with steep terrain. The proposed location for the play structure presents the best option for both safety and aesthetics. The location is well hidden from the primary street and is offset from the front of the main building. The natural landscape of our property offers plentiful screening for the play structure from the primary street. The proposed location also simultaneously provides a safe environment for use of the play structure by our young children. Both the sides and rear of the main building have topography with severe slopes that do not offer a reasonable option for location of a play structure. Side and rear yard grade changes in the near vicinity of the main building are in excess of 30 feet. There is an overall grade change of approximately 200 feet from the front boundary of the property to the rear boundary.

Similar single-family residential parcels within Sandy Springs do not contain the extreme topography of our property. The property is also located on a residential street with no sidewalks or street lights nearby. As such, reasonable safe locations for minor children to play outside are minimal. We are seeking to create a safe environment for our children to play and have made significant efforts in design and proposed location to maintain development that is consistent with the existing aesthetic of the property and natural surroundings.

**c. Such conditions are not the result of action or inaction of the current property owner**

The challenging topography of our property has been in existence since the land was developed over 30 years ago. The small size of the play structure does not require a building permit for its construction. We started construction of the play structure and, unknowingly, placed it in a location that requires a variance. Well into construction, we received a Notice of Violation relating to the play structure location, at which point we immediately stopped work and contacted the Planning Office to review our options. While we understand ignorance of the Development Code is no excuse, we do think it is important that Planning Staff and the Board understand this was a genuine mistake on our part and not merely an attempt to avoid code restrictions. We were, unfortunately, unaware of the limitations set forth in Section 7.8.22. We are now submitting this variance application to try and remedy our error in prematurely starting construction of the play structure.

**d. The variance request would provide the minimum relief necessary to make possible the reasonable use of the property**

Approval of our variance request would provide the minimum relief necessary to make possible the reasonable use of the property. In anticipation of this variance application, a few of our neighbors prepared letters of support for Planning Staff and the Board. Those letters are included as attachments to this Variance Analysis.

In looking at the totality of our property, the location identified for the play structure presents the best option. The topography of the front portion of our property is the only area that allows for safe use of a play structure and the specific location identified provides the most plentiful natural screening from the primary street. The proposed location also minimizes intrusion into the setback to the greatest extent, without moving into the challenging topography of our property. The play structure would be in a wooded area with limited visibility from the primary street as shown in the photos below:



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- e. **The variance request would result in development that is consistent with the general intent of the Development Code, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety and welfare**

Approval of our variance request would result in development that is consistent with the general intent of the Development Code, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety or welfare. The proposed location for the play structure ensures conservation of existing land and natural resources. An alternate location on our property would require removal of trees and significant re-grading of the existing slope. As such, the location also promotes the preservation and enhancement of the tree canopy on our property and within our residential neighborhood.

In addition, we have taken great care in design of the play structure to mirror the design and color scheme of the main building, to further create a seamless look in the overall aesthetic of the property. The play structure contains divided light windows, to match the design of the windows on the front façade of the main building. The final play structure will also be finished with lap siding that will be painted the same color of the main building, and all exposed wood components of the play structure will be stained a color similar to the stained wood accents on the front façade of the main building. As a result, the design of the play structure will be in harmony with the main building, helping to both (i) preserve and reinforce the unique characteristics of our neighborhood and (ii) promote quality landscape and building design that advances the function and beauty of our property.

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January 12, 2020

City of Sandy Springs  
Planning Commission & Board of Appeals  
1 Galambos Way  
Sandy Springs, GA 30328

City of Sandy Springs  
Community Development

To Whom It May Concern:

We own the residence located at [REDACTED] in Sandy Springs. Our neighbors at [REDACTED] Scott and Jessica Borgert, are applying for a variance under the City of Sandy Springs Development Code to allow placement of a play structure in the front portion of their property. As residents on Riverview Road, we are writing to the Planning Commission and the Board of Appeals to offer our support of the Borgert's variance application. We understand the challenging topography of our street and have no concerns with location of the Borgert's proposed play structure in the front portion of their property.

We thank you in advance for your consideration of our support.

Sincerely,



Lily Hamilton  
[REDACTED]



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City of Sandy Springs  
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To: The City of Sandy Springs, GA

Re: Front yard Playhouse Variance at 5072 Riverview Road

We have been residents of Riverview Road for forty years. We are well acquainted with the property at 5072 Riverview Road. The small playhouse at the western side/front of the home is well concealed by a nest of trees and is barely visible from the street even now in winter.

We submit that allowance of a variance for the playhouse structure does not pose any detriment to the residents of Riverview Road.

*Clyde and Susan Calhoun* 1/13/2020

Clyde and Susan Calhoun



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1/13/2020

City of Sandy Springs Planning Commission & Board of Appeals

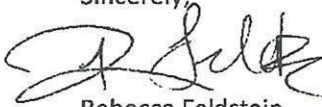
1 Galambos Way

Sandy Springs, GA 30328

To Whom It May Concern:

We own the residence located at [REDACTED] in Sandy Springs. Our neighbors at [REDACTED] Scott and Jessica Borgert, are applying for a variance under the City of Sandy Springs Development Code to allow placement of a play structure in the front portion of their property. As residents on Riverview Road, we are writing to the Planning Commission and the Board of Appeals to offer our support of the Borgert's variance application. We understand the challenging topography of our street and have no concerns with location of the Borgert's proposed play structure in the front portion of their property. We thank you in advance for your consideration of our support.

Sincerely,



Rebecca Feldstein

[REDACTED]

January 27, 2020

City of Sandy Springs  
Planning Commission & Board of Appeals  
1 Galambos Way  
Sandy Springs, GA 30328

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City of Sandy Springs  
Community Development

To Whom It May Concern:

We own the residence located at [REDACTED] in Sandy Springs. Our next-door neighbors at [REDACTED] Scott and Jessica Borgert, are applying for a variance under the City of Sandy Springs Development Code to allow placement of a play structure in the front portion of their property.

As residents on Riverview Road, we are writing to the Planning Commission and the Board of Appeals to offer our support of the Borgert's variance application. We are located on the side where the structure is situated, understand the challenging topography of our neighborhood, and have no concerns with location of the Borgert's proposed play structure in the front portion of their property.

We thank you in advance for your consideration of our support.

Sincerely,



Stephanie Tarrer

[REDACTED]